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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,943	06/25/2001	William A. Mittelstadt	56842USA4A.002	9282

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EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 09/888,943	Applicant(s) MITTELSTADT ET AL.	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on October 26<sup>th</sup>, 2004.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☒ Claim(s) 15-27 is/are allowed.  
 6) ☒ Claim(s) 28-35 and 38-45 is/are rejected.  
 7) ☒ Claim(s) 36,37,46 and 47 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Japuntich et al. US Patent No. 5,509,436. Referring to claim 28, Japuntich discloses a unidirectional fluid valve that comprises a face mask (10) having at least opening for receiving a unidirectional valve; and a unidirectional valve that comprises a valve body comprising a valve opening 52; and a valve flap having a first portion attached to the valve body and an adjacent second portion that seals the valve opening, wherein the valve flap has a curvature from the first end to the second end when the valve flap is not attached to the valve body, and further wherein at least a portion of the curvature of the valve flap is at least partially flattened when the valve flap seals the valve opening.

Referring to claim 29, Japuntich discloses an apparatus wherein the valve opening is generally planar, and wherein the valve flap curvature biases the valve flap toward the valve opening when the valve flap is attached to the valve body to seal the valve opening (Refer to figures 3 and 4 and column 6 lines 33 through 67).

Referring to claim 30, Japuntich discloses an apparatus wherein the valve flap curvature biases the valve flap towards the valve opening to seal the valve opening, and wherein the bias of the valve flap toward the valve opening is sufficient to seal between the valve opening in any orientation of the unidirectional valve (see figures 3 and 4).

Referring to claim 31, Japuntich discloses an apparatus wherein the curvature in the valve flap comprises a constant curvature from the first end to the second end (see figures 3 and 4).

Referring to claim 32, Japuntich discloses an apparatus wherein the curvature in the valve flap varies from the first end to the second end (see figures 3 and 4).

Referring to claim 33, Japuntich discloses an apparatus wherein the facemask is formed of a filtering material (see column 5 lines 10-15).

Referring to claims 34 and 35, Japuntich discloses an apparatus wherein the unidirectional valve is an exhalation/inhalation valve (see column 11 lines 10 through 15).

Referring to claim 38, Japuntich discloses an apparatus that comprises a face mask 10 comprising an opening formed therethrough; and a unidirectional valve located over the opening in the face mask, the unidirectional valve comprising a valve flap 24 attached to the face mask over the opening, the valve flap 24 comprising a curvature from a first end to a second end when the valve flap is not attached to the face mask, wherein the curvature of the valve flap is at least partially flattened when the valve flap seals the opening in the face mask.

Referring to claim 39, Japuntich discloses an apparatus wherein the at least partially flattened curvature of the valve flap creates a bias that is substantial enough to keep the valve flap sealed over the opening in all orientations (see figures 3 and 4).

Referring to claim 40, Japuntich discloses an apparatus wherein the curvature of the valve flap comprises a constant curvature (see figures 3 and 4).

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Referring to claim 41, Japuntich discloses an apparatus wherein the curvature of the valve flap varies from the first end to the second end (see figure 3 and 4).

Referring to claim 42, Japuntich discloses an apparatus wherein the opening is generally planar such that the curvature of the valve flap attached to the face mask over the opening is flattened when the valve flap seals the opening in the face mask (see figure 3 and 4).

Referring to claim 43, Japuntich discloses an apparatus wherein the facemask is formed of a filtering material (see column 5 lines 10-15).

Referring to claims 44 and 45, Japuntich discloses an apparatus wherein the unidirectional valve is an exhalation/inhalation valve (see column 11 lines 10 through 15).

***Allowable Subject Matter***

Claims 15 through 27 are allowed.

Claims 36, 37, 46 and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
January 7<sup>th</sup>, 2004

Henry Bennett  
Supervisory Patent Examiner  
Group 3700

